

.CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C 5/12/04 Item:

File Number
CP04-013 and ABC04-002

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
467-22-046

PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: South side of East Santa Clara Street, between 2nd and 3rd Streets

Gross Acreage: 0.41

Net Acreage: 0.41

Net Density: n/a

Existing Zoning: DC Downtown
Primary Commercial District

Existing Use: Vacant tenant space in an existing commercial building

Proposed Zoning: No change

Proposed Use: Conditional Use Permit for (1) an entertainment and drinking establishment, and (2) late night use hours of operation between 12:00 midnight and 2:00 am.

GENERAL PLAN

Completed by: LX

Land Use/Transportation Diagram Designation
Core Area

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Commercial/Office

DC Downtown Primary Commercial

East: Commercial/Office

DC Downtown Primary Commercial

South: Commercial/Office

DC Downtown Primary Commercial

West: Commercial/Office

DC Downtown Primary Commercial

ENVIRONMENTAL STATUS

Completed by: LX

☐ Environmental Impact Report adopted
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: LX

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

CONTACT	APPLICANT	OWNER
West Designs Attn: Michael Abler 1384 Martin Avenue San José, CA 95126	M Bar Inc. Attn: Michael Smith 1384 Martin Avenue San José, CA 95126	Office Associates/ a CA General Partnership Attn: James F. Fox 66 East Santa Clara Street San José, CA 95113

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LX

Department of Public Works

✍ See Attached

Other Departments and Agencies

✍ San José Police Department (See Attached)

GENERAL CORRESPONDENCE

✍ None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, M Bar Inc., is requesting a Conditional Use Permit (CUP) and a Liquor License Exception Permit to allow for an entertainment and drinking establishment which includes a cocktail lounge, dancing, live music, two (2) pool tables, TV's, two (2) dart machines, a jukebox, and one (1) karaoke machine, all with late-night use hours of operation between 12:00 midnight and 2:00 am.

The subject site is located within the boundaries of the recently approved Downtown rezoning that went into effect on April 30, 2004. The site was rezoned from CG Commercial General to DC Downtown Primary Commercial. The application for the subject site was filed and deemed complete prior to the effective date of the Downtown rezoning. According to the Ordinance for the rezoning, projects with pending complete applications prior to the effective date of the rezoning shall be processed under the requirements in effect when the application was accepted as complete. The provisions of the CG zoning district relative to this application are the same as what would be imposed under the new DC zoning district, in both instances, a CUP is required.

Site Conditions and Context

The subject site is located in the New Century Block City Landmark, which is an existing commercial building located at 78 East Santa Clara Street on 0.41 gross acres. The building is two-stories with offices on the second floor and a mixture of commercial tenants on the first floor, including the Toon's bar/nightclub, two restaurants, and a men's clothing store.

The site is surrounded with a mixture of commercial and office uses. The Earthlink office building is located to the north of the site across Santa Clara Street. A surface parking lot is located to the south of the site. Said parking lot is the site of the CIM Heart of the City project, which includes 31 apartments, 42 condominiums, and 17,500 square feet of retail space.

Project Description

The proposed drinking and entertainment establishment, M Bar, would be located in a ground-level tenant space in the east end of the commercial building located on the south side of East Santa Clara Street between 2nd and 3rd Streets. The establishment would include a cocktail lounge, which is considered a drinking establishment pursuant to the Zoning Code, dancing, live music, two (2) pool tables, multiple TV's, two (2) dart machines, a jukebox, and one (1) karaoke machine. The establishment proposes to be open from 10:00 a.m. to 2:00 a.m. seven days a week. The commercial building that the M Bar is locating in is the New Century Block City Landmark, which is listed on the National Register of historic Places. The applicant is not proposing any exterior changes to the structure with this Conditional Use Permit.

The subject site is also located in the Downtown Parking Management Zone. This Zone establishes the minimum number of off-street parking spaces required for uses conducted within the Zone. For both a drinking and entertainment establishment use there is no parking required.

GENERAL PLAN CONFORMANCE

The existing and proposed use of the commercial building is consistent with the San José General Plan Land Use/ Transportation Diagram designation of Core Area in that entertainment uses are an intended use under the designation. The proposed use also furthers the City's General Plan Downtown Revitalization Major Strategy. This Major Strategy encourages new investment in and around the Downtown to create a prominent and attractive place with a vibrant mix of uses. The proposed M Bar is locating in a vacant tenant space, which will aid in encouraging investment by filling vacant storefronts.

ANALYSIS

The primary policies applicable for the review and analysis of this project are City Council Policy 6-27 for the Evaluation of 24 Hour Uses, City Council Policy 6-23 for the Evaluation of Nightclubs and Bars, and Criteria for Review of a Liquor License Exception. In addition, the concerns of the San José Police Department were also taken into consideration. The analysis of each of these issues is discussed below.

City Council Policy 6-27: Evaluation of 24 Hour Uses

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/bars, the Policy states that uses under this category should meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars. Please see the discussion below.

City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

The City Council Policy, Guidelines for Evaluation of Nightclubs and Bars, was written to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval.

Key issues identified in the policy that are relevant to this proposal include land use compatibility and noise. The subject site is located in the Downtown and is adjacent to commercial and office uses. The adjacent commercial and office uses are compatible with the proposed nightclub/bar. Located adjacent to the southern property line of the subject site is the CIM Heart of the City project, which includes residential and retail uses. This project is in the beginning phase of construction. The proposed nightclub/bar would be

adjacent to the rear of the ground floor retail use of the CIM project and the residential uses on the second floor. The proposed project does not have any outdoor space that would affect the planned residential uses. In addition, as a part of this Conditional Use Permit, the project will be required to meet City noise standards.

In addition, the area immediately surrounding the proposed nightclub/bar is designated for Core Area in the General Plan. The Core Area designation intends for a mix of office, retail, service, high density residential, and entertainment uses in the Downtown Core Area to facilitate a vibrant urban environment. The proposed use furthers this intent.

Based on the analysis, staff concludes that the proposed use is consistent with the intent of the Council Policy.

Police Department Concerns and Public Safety

The Council Policy, Guidelines for Evaluation of Nightclubs and Bars, specifies that the Chief of Police should evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. The recommendation was to have a security plan if needed. A space at the exterior of the building for a security doorman is indicated on the plans.

The Police Department also provided information in regards to a Liquor License Exception Permit. An Exception Permit is required for this proposal because under AB2897, the Caldera Bill, the subject site is located in a census tract where the issuance of a license would add to an undue concentration of liquor licenses in that the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio of retail on-sale/retail off-sale licenses to population in the County of the proposed premise.

Liquor License Exception Permit

According to the Police Department memo (see attached), the subject site is located in an area that is unduly concentrated with on-sale Alcohol Beverage Control (ABC) licenses. The proposed nightclub/bar will further impact the area; therefore a Liquor License Exception permit is necessary. In addition, the applicant is also required to obtain an entertainment and amusement game permit from the Police Department.

A Liquor License Exception has been submitted, File No. ABC04-002, for concurrent review with this Conditional Use Permit. Under the criteria for review of a Liquor License Exception, it states that if the premises of the proposed license is located in the Downtown Core Area/Downtown Entertainment District, exceptions may be allowed. The subject site is located within Downtown Core Area/Downtown Entertainment District, and the ABC license would not allow for the off-sale of alcohol, therefore staff recommends the granting of the exception. Based on the analysis, staff concludes that the proposed use is consistent with the Council Policy in regard to police concerns and public safety.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA). Pursuant to Section 15303 of the CEQA Guidelines, conversion of small structures from one use to another are exempt from further environmental review. The

proposed project qualifies for this exemption in that the project involves the location of a drinking and entertainment establishment in an existing non-occupied tenant space in an existing commercial building.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and Liquor License Exception and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Core Area on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is zoned currently zoned DC Downtown Primary Commercial; however was zoned CG Commercial General when the application was deemed complete.
3. The site is 0.41 gross acres in size.
4. The site consists of a two-story commercial building, and the subject tenant space in the building is 1,916 square feet.
5. The area immediately surrounding the site is designated Core Area on the San José 2020 General Plan Land Use/Transportation Diagram and is located in the DC Downtown Primary Commercial zoning district.
6. Uses surrounding the site include commercial and office uses to the north, east and west and a surface parking lot to the south.
7. The proposed project consists of a drinking and entertainment establishment which includes a cocktail lounge, dancing, live music, two (2) pool tables, two (2) dart machines, a ukebox, and one (1) karaoke machine, all with late night use hours of operation between 12:00 midnight and 2:00 a.m.
8. A Conditional Use Permit is required to allow the drinking and entertainment establishment and late night use hour in the CG Commercial General Zoning District.
9. Council Policy 6-23 specifies that the Chief of Police evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. The Police Department has reviewed the proposal and has provided recommendations to enhance on-site security. The nightclub/bar is required to obtain a public entertainment permit from the Police Department and an amusement device permit from the Treasury Department.
10. Under AB2897, the Caldera Bill, a Liquor License Exception Permit is required for this proposal

because the subject site is located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio of retail on-sale/retail off-sale licenses to population in the County of the proposed premise.

11. The subject site is located in the Downtown Core/Entertainment District.
12. Alcohol service and entertainment will cease at 1:30 a.m. daily.
13. The subject site is located in the Downtown Parking Management Zone. Within this Zone, there is no parking required for a drinking or entertainment establishment use.
14. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project provides a public convenience in approving the liquor license exception.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
2. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - a. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - b. Be detrimental to public health, safety or general welfare; and
3. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
4. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
5. Under the Downtown Parking Management Zone no parking is required for the nightclub/bar use.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "M Bar 78 E. Santa Clara Street San José, CA 95113" dated March 29, 2004, on file with the Department of Planning, Building and Code Enforcement.
3. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-05904) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
4. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP04-013, shall be printed on all construction plans submitted to the Building Division.
5. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
6. **Additional Permits.** Obtain all applicable permits required per the San José Municipal Code including but not limited to a public entertainment permit from the Police Department and an amusement device permit from the Treasury Department.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
2. **Noise.** The sound level generated on this site shall not exceed 55 dba DNL at any property line adjacent to a property used for residential purposes and shall not exceed 60 dba DNL at any adjacent property line of property used for commercial purposes.
3. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
4. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 p.m. and 6:00 a.m. daily.
 - c. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
5. **Hours of Operation.** 10:00 a.m. to 2:00 a.m. seven days a week.
6. **Alcohol Service.** Alcohol service shall cease at 1:30 a.m., daily.
7. **Entertainment.** All entertainment shall cease at 1:30 a.m., daily.
8. **Use Limitations.** Admittance to the establishment is restricted to patrons 21 years of age and older.
9. **Security.** A space is provided at the exterior front of the building for a security doorman if needed.
10. **Patron Parking.** The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
11. **Lighting.** This permit allows no new on-site lighting.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire five years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such five-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

2. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal Conditional Use Permit application. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
3. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance